

ARTICLE 8

INDEMNIFICATION AND NON-LIABILITY OF THE ISSUER AND THE TRUSTEE

Section 8.1 Hold Harmless Provisions. (a) The Borrower agrees that the Issuer and the Trustee shall not be liable for and agrees to defend, indemnify, release and hold the Issuer and the Trustee harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the System or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the System, (ii) liability arising from or expense incurred by the Issuer's financing or refinancing of the System, including without limiting the generality of the foregoing, all claims arising from the breach by the Borrower of any of its covenants contained herein, and all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, and (iii) liability arising from or expense incurred by the Trustee and the Issuer by reason of any act or omission of the Borrower by reason of this Agreement or the exercise of the Trustee's or the Issuer's rights and remedies under this Agreement, provided that any such losses, damages, liabilities or expenses of the Issuer or the Trustee are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Issuer or the Trustee or their respective members, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer or the Trustee, or their respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law.

(b) Notwithstanding any other provisions of this Agreement, the obligations of the Borrower pursuant to this Section 8.1 shall remain in full force and effect after the termination of this Agreement and the resignation or removal of the Trustee, until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Issuer or the Trustee or their respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Issuer or the Trustee or their respective members, directors, officers, agents or employees by any employee or contractor of the Borrower or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Borrower hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.2 Payment of Costs upon Default. The Borrower shall pay, shall provide indemnity for, and shall indemnify the Issuer, the Master Trustee, and the Trustee against, all costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in

enforcing any covenant or agreement of the Borrower contained in this Agreement or in performing their respective duties under the Bond Indenture or the Master Indenture.

ARTICLE 9

TERMINATION OF AGREEMENT

Section 9.1 Termination of Agreement. When the Trustee certifies to the Issuer that all Bonds and the interest thereon have been defeased in accordance with Section 10.1 of the Bond Indenture and that all other obligations incurred by the Issuer and the Borrower under the Bond Indenture, this Agreement and the Master Note, Series 2005 have been paid or that sufficient funds for such payment are held in trust by the Trustee for such purposes, this Agreement shall terminate and the Trustee shall deliver the Master Note, Series 2005 to the Master Trustee for cancellation. After cancellation, the Master Trustee shall deliver the same, along with appropriate Uniform Commercial Code termination statements, to the Borrower; provided, however, that the rights to indemnification set forth in Section 8.1 hereof shall survive the termination of this Agreement.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Members, Officers and Employees of the Issuer and Borrower Not Liable. Neither the members, officers, agents and employees of the Issuer nor the officers or employees of the Borrower shall be personally liable for any costs, losses, damages or liabilities caused or subsequently incurred by the Borrower or any officer, director, agent or employee thereof in connection with or as a result of this Agreement.

Section 10.2 Amendment of Agreement. This Agreement may, with the consent of the Trustee but without the consent of or notice to any of the Bondholders, be amended by an instrument executed by the Borrower and the Issuer, from time to time, to:

- (a) cure any ambiguity or formal defect or omission in this Agreement or in any supplement thereto;
- (b) grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders or the Trustee;
- (c) add conditions, limitations and restrictions on the Borrower to be observed thereafter;
- (d) in connection with any other change therein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or Bondholders; or
- (e) make any other amendment otherwise permitted by Section 9.1(b) of the Bond Indenture.

Other than amendments referred to in the preceding paragraph of this Section and subject to the terms and provisions and limitations contained in Section 10.2 of the Bond Indenture and not otherwise or the Holders of not less than 51% in aggregate principal amount of the Bonds then Outstanding shall have the right, but only with the consent of the Trustee from time to time, to approve the execution by the Borrower and the Issuer of such supplements and amendments hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein; provided, however, nothing in this Section shall permit or be construed as permitting a supplement or amendment which would:

(i) Extend the stated maturity of or time for paying interest on the Bonds or reduce the principal amount of or the redemption premium or rate of interest payable on the Bonds without the consent of the Holders of all Bonds then Outstanding;

(ii) Except as permitted in the Master Indenture, grant to the holder of any Indebtedness a security interest in Pledged Assets (as defined in the Master Indenture) superior to that of the Holders without the consent of the Holders of all Bonds then Outstanding; or

(iii) Reduce the aggregate principal amount of Bonds then Outstanding the consent of the Holders of which is required to authorize such supplement or amendment without the consent of the Holders of all Bonds then Outstanding.

Section 10.3 Redemption of Bonds. Upon the request of the Borrower made in accordance with this Agreement, the Issuer, or the Trustee, on behalf of the Issuer, shall take all steps that may be proper and necessary under the applicable redemption provisions of the Bond Indenture to effect the redemption of all or part of the then Outstanding Bonds in such principal amount and on such redemption date as the Borrower shall direct. All expenses of such redemption shall be paid from money in the hands of the Trustee or by the Borrower and not from funds of the Issuer.

Section 10.4 Surplus Funds. When all Bonds shall have been redeemed or retired and the Bonds and all other obligations incurred or to be incurred by the Issuer and the Trustee under the Bond Indenture or this Agreement shall have been paid, or sufficient funds or Defeasance Obligations shall be held in trust pursuant to the Bond Indenture for the payment of all such obligations, any surplus funds from or for the account of the Borrower remaining to the credit of any fund or account established under the Bond Indenture for the security of Bonds shall be paid to the Borrower as an overpayment of the Loan Repayments.

Section 10.5 Limitation on the Issuer's Liability. All obligations of the Issuer under this Agreement shall be payable solely from the Loan Repayments, the Master Note, Series 2005, and other revenues derived and to be derived from the Borrower. Neither the members, officers, agents nor employees of the Issuer shall be personally liable for the payment of any sum or for the performance of any obligation under this Agreement.

Section 10.6 Borrower's Remedies. In the event the Issuer should fail to perform any of its obligations under this Agreement, the Borrower may institute such action against the Issuer

as the Borrower may deem necessary to compel performance; provided, however, that no such action shall seek to impose, or impose, any pecuniary liability upon the Issuer other than from Loan Repayments and other revenues derived from the Borrower, or any personal or pecuniary liability upon any member, officer, agent or employee thereof.

Section 10.7 Consents and Approvals. Whenever the written consent or approval of the Issuer, the Borrower, or the Trustee shall be required under the provisions of this Agreement, such consent or approval shall not be unreasonably withheld or delayed. Unless otherwise specified herein, consents of the Issuer shall be executed and delivered on behalf of the Issuer by the Issuer Representative and consents of the Borrower shall be executed and delivered on behalf of the Borrower by the Borrower Representative.

Section 10.8 Extent of Covenants. All covenants, stipulations, obligations and agreements of the Issuer and the Borrower contained in this Agreement shall be effective to the extent authorized and permitted by applicable law.

Section 10.9 Notices; Demands; Requests. All notices, demands and requests to be given to or made hereunder by the Borrower, the Issuer, or the Trustee shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

(a) As to the Borrower:

North Key Largo Utility Corp.
24 Dockside Lane, Suite 505
Key Largo, Florida 33037
Attention:
Tel: (305) 367-3067
Fax: (305) 367-4246

(b) As to the Issuer:

Monroe County Industrial Development Authority
500 College Road
Key West, Florida
Attention: County Attorney
Tel: (305) 292-3470
Fax: (305) 292-3516

(c) As to the Trustee:

Wachovia Bank, National Association
200 South Biscayne Boulevard, 14th Floor
Miami, Florida 33131
Attention: Corporate Trust Department
Tel: (305) 789-4685
Fax: (305) 789-4678

Any such notice, demand or request may also be transmitted to the appropriate above mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

Section 10.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

Section 10.11 Severability. If any one or more of the covenants, agreements or provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, agreements and provisions shall in no way affect the validity or effectiveness of the remainder of this Agreement, and this Agreement shall continue in force to the fullest extent permitted by law.

Section 10.12 State Law Controlling. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

Section 10.13 Bond Indenture. The Borrower consents to the execution of the Bond Indenture by the parties thereto and the Borrower agrees to be bound by the terms and provisions therein that pertain to the Borrower.

IN WITNESS WHEREOF, the Monroe County Industrial Development Authority has caused these presents to be signed in its name and on its behalf by its Chairman and attested by its Secretary and North Key Largo Utility Corp. has caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of April 1, 2005.

MONROE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY

By: _____
Chairman

ATTEST:

Secretary

NORTH KEY LARGO UTILITY CORP.

By: _____
Its: President

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____ and _____, the Chairman and the Secretary, respectively, of the Monroe County Industrial Development Authority, a public body corporate and politic of the State of Florida, on behalf of the Issuer. Such person did not take an oath and: (notary must check applicable box)

- ☐ is/are personally known to me.
- ☐ produced a current Florida driver's license as identification.
- ☐ produced _____ as identification.

{Notary Seal must be affixed}

Signature of Notary

Name of Notary (Typed, Printed or Stamped)
Commission Number (if not legible on seal): _____
My Commission Expires (if not legible on seal): _____

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by David Ritz, the President of North Key Largo Utility Corp., a not-for-profit corporation organized and existing under the laws of the State of Florida, on behalf of the corporation. Such person did not take an oath and: (notary must check applicable box)

- ☐ is/are personally known to me.
- ☐ produced a current Florida driver's license as identification.
- ☐ produced _____ as identification.

{Notary Seal must be affixed}

Signature of Notary

Name of Notary (Typed, Printed or Stamped)
Commission Number (if not legible on seal): _____
My Commission Expires (if not legible on seal): _____